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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,102	01/31/2001	Jonathan S. Goldstone	Q60463	1078
7590 01/25/2007 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. WASHINGTON, DC 20037-3213			EXAMINER HYUN, SOON D	
			ART UNIT	PAPER NUMBER
			2616	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

09/774,102

Applicant(s)

GOLDSTONE, JONATHAN S.

Examiner

Soon D. Hyun

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 10, 11, 19-23, and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-9, 12-18, 24, and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities:

Line 6, "of sites" should be changed to – origin site routers – to avoid lack of antecedent basis.

Line 7, -- site – should be added before "routers" to be consistent through the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 5-8, 12, 13, 15-18, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Yavatkar et al (U.S. Patent No. 6,735,702).

Regarding claims 5, 8, 12, 13, and 15-18, Yavatkar et al (Yavatkar) discloses a method or a network system for preventing bandwidth congestion on a network (4 in Fig. 3), comprising:

providing a destination site router (30 in FIG. 3, col. 1, lines 21-25) connected to a destination site or a destination server (node 34 in FIG. 3) locally and also to an Internet connection (col. 1, lines 30-34);

providing a plurality of origin site (client) routers (nodes 46 and 48 in FIG. 3), one of which is connected to an attacking site or client (e.g., node 56 in FIG. 3, col. 17, lines 20-22), wherein each of the plurality of sites has a respective address associated with it (col. 1, lines 30-34);

providing connectivity between the origin and destination routers (a router-router connection) to the Internet (FIG. 3), but allowing addresses (e.g., nodes 40 and node 54) not corresponding to the attacking site access to internet (col. 17, lines 17-22);

detecting a bandwidth congestion at the destination site router by a watchdog agent (a firewall), wherein the bandwidth congestion originates at the attacking site (col. 15, lines 63-67);

informing the origin site router and other intermediate routers within the Internet of the bandwidth congestion and of an attacking address corresponding to the attacking site from which the bandwidth congestion originated (col. 17, lines 17-20 and col. 18, lines 60-64), wherein the attacking address is determined from a request packet received from the attacking site, i.e., the watchdog agent monitors for SYN packets (request packets) having invalid return addresses (col. 15, lines 18-21), therefore, obtaining address from the SYN packet itself is taught.

Regarding claim 6, Yavatkar further discloses that the step of informing is performed automatically by the destination router (col. 18, lines 54-67).

Regarding claim 7, Yavatkar further discloses that the step of informing is performed by human intervention (col. 16, lines 22-25).

Regarding claim 28, Yavatkar further discloses that each router has a routing table (an access list) to prevent traffic from a attacking site (col. 18, lines 56-59).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yavatkar et al (U.S. Patent No. 6,735,702).

Refer to the discussion for claim 5, but Yavatkar et al (Yavatkar) lacks the step of preventing is performed until a human administrator intervenes after determining whether the attacking site should be permitted to gain access to the Internet. Although Yavatkar does not explicitly disclose the human administrator permitting access to the Internet, Yavatkar does strongly suggest this is the case (col. 6, lines 12-18 where the ability of a human operator to send commands to nodes, instructing the nodes how to behave strongly suggests a human operator has the capability to allow or prevent a given address from accessing a node). It would have been obvious to one with ordinary skill in the art at the time of invention to include the human operator allowing or preventing access to a given node

for the purpose of allowing legitimate users to access the network while stopping malicious users from accessing the network. The motivation for not allowing malicious attacks to propagate through the network is to prevent network congestion and thus allow legitimate users to properly access the network (col. 15, lines 63-64).

6. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yavatkar et al (U.S. Patent No. 6,735,702) in view of Cox et al (U.S. patent No. 6,738,814).

Refer to the discussion for claims 5 and 12, but Yavatkar does not explicitly teach that the step of preventing is performed for a predetermined amount of time during which it is determined whether the attacking site is attempting to cause the bandwidth congestion and the attacking site is permitted to gain access to the internet if it is determined that the attacking site is not attempting to cause the bandwidth congestion. Cox teaches that that an attacking site is permitted to gain access to a network when a variable time limit (a predetermined amount of time) is reached (col. 5, lines 1-3), it is inherent to check whether the attacking site is attempting to cause the bandwidth congestion during the time limit, because any attack (including the attacking site) to the network is checked during the predetermined time and the attacking site is not allowed to gain the network during another variable time limit if the attacking site is attempting to cause the bandwidth congestion. Therefore, it would have been obvious to one having ordinary skill in the art to incorporate the method of Cox into Yavatkar to allow the attacking site to access the Internet if there is no longer attack from the site.

Response to Arguments

7. Applicant's arguments filed 10/25/2006 have been fully considered but they are not persuasive.

Regarding claims 5, 12, and 15-18, Applicant argues (page 13, line 21-page 14, line 2 of the Remarks) that "Yavatkar is silent on obtaining address from the request packet itself and transmitting the address to a router(s), as recited in claims 5, 12, and 15-18." Examiner disagrees. With reference to col. 15, lines 18-21, Yavatkar clearly teaches that the watchdog agent monitors for SYN packets (the request packets) having invalid return addresses, i.e., obtaining address from the SYN packet (the request packet) itself.

In response to applicant's argument that the reference fails to show a step of transmitting the address to a router, it is noted that the feature is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 9, 14, and 24, refer to the discussion for claims 5, 12, and 15-18, because Applicant argues same feature.

Regarding claim 28, Applicant further argues that the reference fails to teach an access list located on a router. Yavatkar clearly discloses that each router has a routing table (an access list) to prevent traffic from a attacking site (col. 18, lines 56-59).

Therefore, Examiner believes that the claim rejection is proper.

Conclusion


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


S. Hyun
1/16/2006


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